

From: Rebecca Wightman  
To: Invitations  
Subject: Comments re SEC Report  
Date: Sunday, July 22, 2012

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To the Chief Justice, the Chair of the Executive and Planning Committee and the Members of the Judicial Council:

I am making these comments as an individual and not on behalf of any organization.

After having read the entire SEC Report, and in reading through hundreds of the comments posted, I am saddened to see our judicial branch lining up to seemingly "take sides." I am not "for" or "against" the AOC. I am in agreement with a number of the Recommendations, but not necessarily all. And while I am in agreement that the AOC may need to have its "bathwater" tossed, there is absolutely no reason to toss the baby out with it, as a few others have noted.

As a statewide judicial branch, we cannot afford to keep throwing stones. I am reminded every day in my job, in this economy, that there is never enough to go around, and that hard choices have to be made, but we must not lose sight of who we are making them for: the people of the state of California – litigants who deserve to have equal access to the courts whether you are in a small or large county, and regardless of socio-economic status. I believe that the role of the AOC *includes* helping our courts and our branch to ensure justice, which is something broader than suggested by the SEC Report.

Also, before going further, I would like to say that I wholeheartedly agree with the comments made by Judge Brenda F. Harbin-Forte, and that I also agree with many of the comments made by Judge Curtis Karnow, and I urge others to read those particular comments.

The hard work of the members of the SEC Committee should clearly be praised. I wish I knew how many of the members of the SEC had actually been on prior Committees within the AOC, or had actually submitted a comment or comments when proposed rules are circulated, as it would have helped me understand their interaction and experience with the AOC in the past. Nevertheless, one of the difficulties I had in trying to discern whether a Recommendation was warranted or not, was the lack of actual specific evidence versus some generalized statements. Let me give you just one small example. When I read Recommendation 7-8, that "CFCC should discontinue investigating and responding to complaints from litigants about judicial officers who handle family law matters, as such matters are handled by other entities" – I thought, "wow", I agree with that one! Who wouldn't? But then I went to the report itself, and found one sentence: "Although it occurred only occasionally, CFCC staff have investigated and responded to complaints from litigants concerning judicial officers who handle family law matters." It raised more questions than answers:

How long ago did this “occasional” conduct occur? Five years ago? Two? Was it one misguided employee (who is no longer there), or was there a policy (or no clear policy) that allowed this to happen? *If the former*, does this really rate a Recommendation (as if the CFCC is running wild despite the existence of the Rules of Court and the CJP)? (Turn the tables: how many courts out there can say with certainty that not a single employee has failed “on occasion” to follow a specific protocol, or how many PJs of our courts can report that not a single bench officer has “on occasion” failed to follow – inadvertently, no doubt – existing rules regarding ex parte communications or other rules that govern our conduct? Does that mean that a full blown Recommendation would be warranted against that court if such an occasion were uncovered in an examination?)

What I am trying to say is that the Judicial Council needs to take a hard look at *each and every one* of the Recommendations, examine the underlying evidence as to what makes sense for moving forward in making the AOC responsive, in as lean and efficient manner as possible, to the needs of the entire court system, including courts and its users. A blind acceptance and implementation of all of the Recommendations will not accomplish that goal.

I would like to note that the SEC report suffers from the same lack of recognition that the Judicial Council and employees at the AOC have exhibited in the past: full recognition of the status of Commissioners as constitutional officers, and the breadth and experience of *all* subordinate judicial officers (SJOs), whether referees or otherwise. In places in the SEC report, references are made that leave out Commissioners and other subordinate judicial officers. For example, see Recommendations 6-8, and 7-81, both of which discuss developing a better process for input and obtaining the viewpoints of courts, judges, and executive officers, leaving out Commissioners and other subordinate judicial officers. SJOs often have a unique perspective on proposed rules, including their fiscal and operational impacts.

Finally, just for the record: My connection to the AOC has primarily been restricted to work provided by the CFCC Division, and mainly the AB1058 Program, with Michael Wright as the Supervising Attorney/Program Manager. The quality of the work from that program, with so few people, has always astounded me. I have also had the pleasure of working with some individuals from CJER, who provided invaluable assistance as a few of my colleagues and I wrote several benchguides for the benefit of the rest of our colleagues in the state.

I do believe that this has been more than a “wake-up” call for all of us, and trust that the Judicial Council will take substantive comments seriously.

Hon. Rebecca L. Wightman  
Commissioner, Superior Court – San Francisco